Minutes of the 83rd meeting of the Board of the EHRC

22 May 2019
Fleetbank House, 2-6 Salisbury Square, London, EC4Y 8JX

Attending:

Commissioners
David Isaac, Chair
Suzanne Baxter
Pavita Cooper
Alasdair Henderson
Susan Johnson
Helen Mahy
June Milligan
Lesley Sawers
Swaran Singh
Rebecca Hilsenrath, Chief Executive Officer (items 1-7; 9-12)

Officers
Clare Collier, Director – Legal (item 8)
Melanie Field, Executive Director – Strategy and Policy and Wales (items 1-7; 9-12)
Richard Mabbitt, Senior Associate - Corporate Governance (items 1-7; 8-12)
Callum MacInnes, Principal – Corporate Governance (items 1-7; 9-12)
Olufemi Oguntunde, Director - Finance and Procurement (items 1-7 and 9-12)
Alastair Pringle, Executive Director – Corporate Delivery
Paola Uccellari, Director – Strategic Planning and Policy (items 1-7 and 9-12)
Ben Wilson, Executive Director, Corporate Improvement and Impact (items 1-7 and 9-12)

Guest
Rachel Perkins, Chair of EHRC Disability Advisory Committee (items 1-7)

Observing
Charles Ramsden, Government Equalities Office (items 1-7)

1. Chair's welcome, attendance and apologies for absence

1.1 David Isaac welcomed attendees.

1.2 At the Commissioners-only session preceding the meeting, Commissioners had expressed their thanks to June Milligan who, having served three years as a Commissioner, had decided to step down from this role following the meeting. Board members acknowledged her contributions as Commissioner and as Chair of the Wales Committee and wished her well for the future.

1.3 The Board had agreed that Alasdair Henderson should chair the Commissioner Working Group on Treaty Monitoring after June Milligan's

departure. The Board had agreed that, as an interim measure while the appointment process for a new Wales Commissioner was under way, the current vice-Chair of the Wales Committee, Alison Parken, should step up to chair the Committee, attend Board meetings, and carry out some stakeholder commitments that would normally be carried out by the Wales Commissioner.

1.4 The Board had also discussed the current protests at Anderton Park School, Birmingham, about teaching on LGBT rights. Rebecca Hilsenrath reported a positive meeting with Jess Philips MP on this. The Board agreed that in responding to this issue, the Commission needed to acknowledge the growing divisions in our society, and that schools played an important part in shaping children's attitudes and can guard against prejudice developing. The Commission should be clear that it wanted schools to be inclusive places where diverse children with different beliefs and backgrounds mix and shared values are developed. The Commission supported education that instilled understanding of and respect for difference, to create engaged citizens equipped for the 21st Century who valued equality and human rights and each other.

1.5 Before the meeting Commissioners had also discussed Board Championship (Discussion Paper: Board Champions refers) with Paola Uccellari, Melanie Field and Callum MacInnes. Feedback was recorded by officers and the Board agreed amendments to the Board Buddying framework to better harness the skills and expertise of Board members in support of the delivery of the Strategic Plan. Officers would provide further clarification about the activities that were planned to be carried out under each of the aims and seek expressions of interest from Commissioners with a view to identifying strategic aim champions. **Action: Callum MacInnes and Commissioners**

2. Apologies for absence

2.1 Apologies had been received from Commissioner Caroline Waters who had provided feedback on papers separately to David Isaac. Mark McLane was also unable to attend.

3. Declarations of interest

3.1 Commissioners had received the annual reminder from the Corporate Governance Team to review their and colleagues' declarations of interest. They had had the opportunity in the pre-meeting session to raise any concerns about their or fellow-Commissioners' interest and if necessary to update their declarations with any interests not declared in-year.

3.2 Suzanne Baxter declared that with effect from 14 May 2019 she had now taken up a role as independent external member of the Board of Pinsent Masons. She clarified that in this role, she would operate entirely independently from David Isaac in his position as a partner at the firm, and that he had not been a member of the selection panel responsible for her appointment. She agreed that she would bring any change in this approach to

the attention of the Board, which agreed that this role did not present a conflict of interest.

3.3 In relation to the Investigation to be discussed at item 8, no Board members were current or recent members of the political party. As an active member of the Anglo-Jewish community, Rebecca Hilsenrath would recuse herself from this part of the meeting to avoid any perception of bias.

3.4 No further declarations were made additional to those already registered, and the Corporate Governance Team would amend the published register to indicate that the annual review of Registers had taken place. **Action: Richard Mabbitt**

4. Minutes of the last meeting

4.1 The minutes of the 82nd Board meeting of 5 March 2019 (paper EHRC 83.01) were agreed as a true record subject to correction to record Lesley Sawers attendance.

5. Actions arising

5.1 The Board reviewed the log of actions arising from Board meetings (EHRC 83.02).

a) On action 82.5.5 (Campbell Tickell Review of Statutory Committee Effectiveness) the Board noted that Committee Chairs had met to discuss on 26 April and feedback had been passed on to Campbell Tickell. Progress against other parts of the Board effectiveness action plan would be reported upon at the Board Meeting of 3 July 2019.

b) On action 22/12.1 (Revocation of Shemima Begum's citizenship) officers had discussed with David Isaac and a watching brief was being maintained. The Commission had developed lines for potential questioning by the UN Committee Against Torture at the May examination of the UK (although in the event the issue had not there arisen) and for the forthcoming ICCPR report, together with media lines.

c) On Action 80/7.3 (England Strategy) Caroline Waters' oral update on this closed action was deferred to the July Meeting. Ben Wilson provided an update on the launch of 'Is England Fairer'. Susan Johnson asked officers taking forward work her to have in mind those Commissioners who were based in or networked to different regions when considering engagement in those regions.

6. CEO's update

6.1 The Board reviewed the CEOs update on strategic issues (EHRC 83.03) and the Period 12 Finance and performance report (EHRC 83.04) with Rebecca Hilsenrath providing an overall report on the Commission's performance

highlights from 2018/19 and key priorities for this financial year. Board members welcomed the revised style and content of these reports. They acknowledged the Commission's achievements in 2018-19 as set out in the presentation and (even though they identified a number of lessons to be learnt and challenges for EHRC to address) that good progress was generally being made on the Commission's transformation journey. They supported the Commission's strategic aspirations, and the structural changes that enabled these. The Board recognised that improvements were being made to the Commission's financial oversight, strategic oversight, and delivery and impact.

6.2 Of the strategic issues flagged in EHRC 83.03, the Board discussed:

a) Windrush and the hostile environment, where the Commission was considering its response to a formal request for intervention;
b) freedom of speech, on which - following the publication of Commission guidance - David Isaac had spoken at an Inside Government event;
c) gender pay gap reporting, where coverage was significantly lower key than in the first year of reporting, and more focussed on the impact of the regulations themselves. The Board felt that it should reflect further on the ask of Government and forward working with the Government Equalities Office on Gender Pay gap reporting and asked for a paper to be brought to a future meeting: **Action: Alasdair MacDonald**
d) racism and discrimination in Sport, with Susan Johnson flagging the work being done on this issue by the Sports Ground Safety Authority and opportunities for co-ordinated regulatory activity;
e) pension ages, on which Rebecca Hilsenrath explained that recent legal correspondence has advised that the Commission could not formally intervene in the cases currently being brought by some women's groups. However the Commission had raised their concerns at the UN and in its CEDAW submission.

6.3 Board members discussed the 2018-19 financial outturn. While the underspend variance was within the tolerance set by the Board when agreeing the 2018/19 key performance indicators, the Board felt there was scope for further improvement and efficiency in this area. It noted the executive's proposals for:

a) strengthening financial accountability in the performance management system;
b) putting in place mandatory financial and commercial training including financial forecasting for Principals and all Executive Group members;
c) strengthening finance business partnering support for parts of the Commission with complexity and variable costs;
d) more proactive monitoring arrangements via the Delivery Group and a new delegation framework that underlines the responsibilities of budget holders;

which took forward measures set out in the Finance Strategy and Development Plan scrutinised by ARAC in September 2018

6.4 Board members noted advice from the NAO that typical levels of NDPB underspend ranged from 1-5% and acknowledged the implications of an over-ambitious approach that landed the Commission in overspend. The Board felt nonetheless that improvements could be made to the pacing and control of the Commission's delivery through the financial year. The Board welcomed the executive's commitment to improve and strengthen performance in future years and noted that a comprehensive lessons learnt exercise being led by Ben Wilson was being prepared for report to the Audit and Risk Assurance Committee in June. With ARAC's input, the Board would consider lessons learned at its July meeting including the scope for recalibrating the 3% tolerance for the 2020-21 Business plan.

Action: Ben Wilson to bring lessons learned report to next Board meeting for discussion

6.5 Board reviewed the report on current Inquiries (EHRC 83.05) which summarised progress on the Commission's legal aid Inquiry; the Inquiry into handling complaints of racism in higher education; and the Inquiry into reasonable adjustments in the criminal justice system. The Board was content with progress and with the proposal for officers to sight relevant Commissioners on emerging findings from inquiries, to provide any strategic steers. The Board noted that the Compliance team was developing a strategy setting out the different types of Inquiry methodology for use in different situations, and looked forward to reviewing this at a future meeting.

7. Committee and Working Group Chairs' Updates.

7.1 Minutes of recent Committee meetings had been circulated to Board members upon clearance by Chairs.

Scotland and Wales Committees

7.2 Lesley Sawers and June Milligan reported that Scotland and Wales Committee were pleased with improvements in the responsiveness and effectiveness of Board-committee information flow, for instance in relation to WEC and to Treaty monitoring.

Disability Advisory Committee

7.3 Rachel Perkins presented the Disability Advisory Committee Chair's annual report (EHRC 83.06). She reported that after a challenging transition period from its statutory predecessor, the new Committee had developed effective ways of working that utilised the expertise, knowledge and networks of its wide membership. The diverse members of the Committee were working well together and appraisals had been completed. Constructive working relationships had been developed and sustained with officers supporting the Committee and across the Commission, and the Committee had had a significant and strategic input to, and impact upon, a number of deliverables.

7.4 Board members noted DACs contribution to work on:

a) employment of disabled people and disability pay gaps;
b) independent living;
c) treaty monitoring, especially the UN Convention on the Rights of Persons with Disabilities;
d) the EHRC response to the Independent Review of the 1983 Mental Health Act;
e) work on Institutionalisation and restraint.

7.5 Board members noted the positive feedback from officers to whom individual DAC members had provided support on a range of issues relating to disabled people including:

a) the Commission's Housing Inquiry;
b) its Reasonable Adjustments project;
c) the Mental Capacity Act Amendment Bill
d) disability-focused litigation;
e) accessible stadia;
f) access to elected office;
g) inclusive education and school exclusions;
h) assisted dying;
i) Public Sector Equality Duty
j) Is Britain Fairer?
k) framing and language used in in EHRC publications

7.6 The Board was pleased with the Committee's contribution to the work of the Commission, and endorsed Rachel Perkins' leadership. David Isaac expressed the Board's thanks to Committee members for their efforts over the past year.

Commissioner Working Group on Treaty Monitoring

7.7 June Milligan reported the Group's main achievements in 2018-19 (paper EHRC 83.07 refers). These included:

a) the Commission's treaty monitoring recommendations and priorities being cited or supported by governments, Parliamentarians and civil society in terms of: Women's rights, Disability rights, Children's rights, race equality and incorporation and accountability;

b) treaty monitoring recommendations being adopted by the UN, with 82% of the issues covered in EHRC's reports, and all of its priority recommendations, being reflected in the CEDAW Committee's concluding observations, of March 2019;

c) EHRC and others increasingly using the international human rights framework in their influencing work.

7.8 The Board welcomed these achievements and thanked CWG members and officers for their efforts.

Human Resources and Remuneration Committee

7.9 The Board reviewed the People Dashboard (EHRC 83.08) and Staff survey results (EHRC 83.09) presented as the Human Resources and Remuneration Committee Chair's report. The Board felt that both documents presented useful management information clearly. It noted that the Committee had felt that these were, on balance, positive especially in terms of the overall staff engagement index against the civil service benchmark, and had endorsed the Commission's proposed approach to addressing areas of concern.

7.10 The Board reflected on the statistics presented and asked HRRC to maintain an overview of work developing leadership skills and addressing sickness absence levels. For future HRRC discussion Board members suggested.

a) adopting Civil Service High Performing Organisations as a more aspirational benchmark.
b) Inclusion of health and safety and pay gap metrics in the people dashboard
c) Further probing of the high levels of leave-carry over, and future thinking about self-declaration and management of leave.

Action: Joe Corcos to discuss with Caroline Waters as part of ongoing HRRC agenda.

8. Investigation

8.1 Alasdair Henderson, the lead Commissioner on this item, introduced paper EHRC 83.10 which sought Board approval in relation to a Section 20 investigation against the Labour Party, which is suspected of unlawful acts, in respect of antisemitism, under the Equality Act 2010. Alasdair Henderson provided an update on progress since the last meeting.

8.2 Alastair Pringle and Clare Collier spoke to the paper including the legal threshold for a Section 20 investigation and the factors which must and may be considered by the Board when exercising its discretion.

8.3 Members reflected on the matters raised in 8.1 and 8.2, and:

a) the need for clear strategic value for enforcement action and taking steps to eliminate and challenge discrimination, harassment and victimisation whatever the context;
b) the different needs, and contexts in Scotland and Wales, and the stakeholder engagements in place;
c) the risks and opportunities arising from the investigation or decision not to investigate, particularly strategic, legal, financial, operational and reputational consequences to the Commission;
d) the impact on the welfare of and support for decision-makers and senior members of EHRC staff who are visible in the public domain;
e) the need for a full communications plan to ensure clear, consistent messaging on the purpose of an investigation.

8.4 The Board agreed by majority that the recommendation for investigating the Labour Party in accordance with the paper and its annexes be approved. **Action: Alastair Pringle and Clare Collier** to take forward.

9. "Working Forward"

9.1 Commissioners Pavita Cooper, Mark McLane and Caroline Waters had been working with officers on a revised proposal for the Commission's Working Forward programme (paper EHRC 83.11 refers). This proposal (that Working Forward be maintained in-house with a scaled back offer, based on what Working Forward members found most useful) took into account the recently completed evaluation of the programme.

9.2 The Board discussed and agreed the proposals as presented.

10. Strengthening Domestic Protection of Human Rights

10.1 Board members considered paper EHRC 83.12 which proposed an approach and influencing strategy for strengthening human rights protection by making international human rights law enforceable in domestic courts.

10.2 The Board approved the proposed policy position that all the rights contained in UN human rights treaties should be made part of domestic law in the long term. The Board agreed that shorter-term incremental changes should be pursued in the meantime.

10.3 The Board reflected on the strategic and political considerations set out in the paper, and asked for the points raised in discussion of this issue by the Scotland and Wales Committees, and at the forthcoming Treaty Monitoring CWG meeting, to be taken into account. David Isaac asked Board members to provide any further feedback directly to officers, and for an update to be provided at the next Board meeting. **Action: Charlie Hamilton**

11. Engagement with WEC

11.1 Board members reviewed paper EHRC 83.13.The Board was content with the narrative to be presented at the WEC hearing as set out in the paper. David Isaac asked for any further observations from Board members to be shared directly with officers

11.2 The Board noted that officers continued to liaise with WEC and GEO in relation to preparations for the second evidence session on the current WEC inquiry which would focus on the Commission's enforcement role, and asked for a progress update at its next meeting. **Action: Paola Uccellari**

12. Any Other Business

12.1 With no other items of business being raised David Isaac thanked attendees and closed the meeting. The Board would next meet on 3 July 2019.